UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/850,202	05/07/2001	Peter Phaal	21906-0703	9730

7590   07/17/2007

David Beck
Bingham McCutchen LLP
3 Embarcadero Center
Suite 1800
San Francisco, CA 94111

EXAMINER
LUU, LE HIEN

ART UNIT	PAPER NUMBER
2141	

MAIL DATE	DELIVERY MODE
07/17/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

MAILED

JUL 17 2007

Technology Center 2100

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 09/850,202
Filing Date: May 07, 2001
Appellant(s): PHAAL, PETER

Peter C. Mei
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed on 02/28/2007 appealing from the Office action mailed on 01/10/2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,308,148	Bruins et al.	10/2001
6,587,878	Merriam	07/2003

(9) Grounds of Rejection

1.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2.   Claims 1-19, and 26-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Bruins** et al (US Patent **6,308,148**) in view of **Merriam** (US Patent **6,587,878**).

3.   Claim(s) 1, 10, 19, 28: Bruins teaches a method to monitor a network by a network monitor, comprising:

receiving data packet flow records from at least one network router (Bruins, col. 2, lines 23-24; wherein the router is collecting flow information to be used);

filtering said flow records (Bruins, col. 2, lines 36-40); and

extracting packet information from said filtered flow records (Bruins, col. 3, lines 66-67) or from at least a fraction of said received flow records (Bruins, col. 2, lines 35-45; wherein the fraction of said received flow records is the subset of total set of flows), wherein said extracted packet information comprises information of at least one target of interest (Bruins, col. 4, lines 9-17; wherein the target of interest is the selected range of source addresses that originate from the internet domain "cisco.com" or in the second case, the target of interest is the selected protocol type such as the "FTP" protocol).

Bruins, however, does not explicitly teach performing active measurements of said at least one target of interest based on said extracted packet information. Bruins does, however, suggest adjusting features or parameters based on aggregated flow information of the network to improve performance (Bruins, Abstract and Claim 5).

Merriam, in an analogous art, teaches a performance measurement program to measure actual performance data (Merriam, col. 5, lines 29-31 and col. 9, lines 45-50).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Bruins' method of extracting packet information from the filtered flow records with Merriam's performance measurement program to measure actual performance data extracted from the filter. One of ordinary skill in the art would recognized that the combination of exporting Bruin's network flow data with Merriam's performance measurement program would improve network performance or make the

network perform more efficiently (Bruins, Abstract and Claim 5, Bruins teaches improving performance of the router by modifying performance parameter of the router based on the aggregated message flow information. In addition, Merriam, col. 3, lines 1-19 and col. 5 line 66 to col. 6 line 16, Merriam teaches measuring and using actual performance time information to fix unacceptable delays).

4.   Claim(s) 2, 11: Bruins and Merriam teach the method according to claim 1, 10, said filtering step comprising: selecting flow records based on packet routing information in said received flow records (Bruins, col. 2, lines 24-25).

5.   Claim(s) 3, 12: Bruins and Merriam teach the method according to claim 2, 11, said filtering comprising selecting flow records having non-local destination or source addresses (Bruins, col. 3, lines 21-23; wherein the destination are host from the "internet" which implies non-local and local hosts. It is well known in the art that a method can filter flow records that have source and/or destination host from a local subnet or other subnets).

6.   Claim(s) 4, 13: Bruins and Merriam teach the method according to claim 2, 11, said filtering comprising selecting flow records having local destination or source addresses (Bruins, col. 3, lines 21-23; wherein the destination are host from the "internet" which implies non-local and local hosts. It is well known in the art that a

method can filter flow records that have source and/or destination host from a local

subnet or other subnets).

7.   Claim(s) 5, 14: Bruins and Merriam teach the method according to claim 2,11,

said filtering step comprising: selecting flow records having destination or source

addresses associated with performing critical services (Bruins, col. 2, lines 28-32 and

col. 3, lines 25-39; wherein the critical servers are file transfer, electronic mail, and http

services).

8.   Claim(s) 6, 15: Bruins and Merriam teach the method according to claim 1, 10,

said filtering step comprising randomly selecting flow records from said received flow

records (Bruins, col. 2, lines 36-38; wherein each filter randomly selects only a subset of

the total flows).

9.   Claim(s) 7, 8, 16, 17, 26, 27: Bruins and Merriam teach the method according to

claim 1, 10, 19, said active measurement comprise a ping and a traceroute process

(Official Notice is taken of active measurement comprise ping and traceroute process.

It is well known in the art at the time of the invention to use these processes in active

measurement of network performance. It is also state in Merriam in col. 1, lines 60-61).

10.   Claim(s) 9, 18: Bruins and Merriam teach the method according to claim 1, 10,

further comprising selecting the nature of said active measurements based on said

target of interest (Merriam, col. 5, lines 29-31 and col. 9, lines 45-50 and FIG. 1, ref. Server probe and remote probes).

11.   Claim(s) 29, 30, 31, 32:   Bruins and Merriam teach the method according to claim 1, 10, 19, 28 further comprising: routing said data packets through said at least one router (Bruins, col. 2, lines 20-21; wherein the function of a router is to route data packets through its interfaces); and generating said data packet flow records (Bruins, col. 2, lines 23-24; wherein the router is collecting or generating flow information to be used. Flow information are information about data packets).

(10) Response to Arguments

(I)   Applicant argues that there would not have been any motivation for one of ordinary skill in the art to combine the teachings of Bruins and Merriam to teach or suggest applicant's claimed invention.

As to point (I), in rejecting claim 1, Examiner stated that Bruins teaches a method to monitor a network by a network monitor, comprising:

receiving data packet flow records from at least one network router (Bruins, col. 2, lines 23-24; wherein the router is collecting flow information to be used);

filtering said flow records (Bruins, col. 2, lines 36-40); and

extracting packet information from said filtered flow records (Bruins, col. 3, lines 66-67) or from at least a fraction of said received flow records (Bruins, col. 2, lines 35-45; wherein the fraction of said received flow records is the subset of total set of flows),

wherein said extracted packet information comprises information of at least one target of interest (Bruins, col. 4, lines 9-17; wherein the target of interest is the selected range of source addresses that originate from the internet domain "cisco.com" or in the second case, the target of interest is the selected protocol type such as the "FTP" protocol).

Bruins, however, does not explicitly teach performing active measurements of said at least one target of interest based on said extracted packet information. Bruins does, however, suggest adjusting features or parameters based on aggregated flow information of the network to improve performance (Bruins, Abstract and Claim 5).

Merriam, in an analogous art, teaches a performance measurement program to measure actual performance data (Merriam, col. 5, lines 29-31 and col. 9, lines 45-50).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Bruins' method of extracting packet information from the filtered flow records with Merriam's performance measurement program to measure actual performance data extracted from the filter. One of ordinary skill in the art would recognized that the combination of exporting Bruin's network flow data with Merriam's performance measurement program would improve network performance or make the network perform more efficiently (Bruins, Abstract and Claim 5, Bruins teaches improving performance of the router by modifying performance parameter of the router based on the aggregated message flow information. In addition, Merriam, col. 3, lines 1-19 and col. 5 line 66 to col. 6 line 16, Merriam teaches measuring and using actual performance time information to fix unacceptable delays).

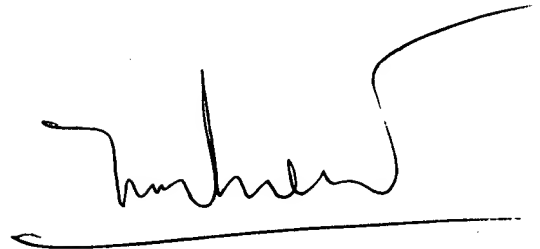Examiner recognizes that obviousness can only be established by combining or

modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Examiner stated that "It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Bruins' method of extracting packet information from the filtered flow records with Merriam's performance measurement program to measure actual performance data extracted from the filter. One of ordinary skill in the art would recognized that the combination of exporting Bruin's network flow data with Merriam's performance measurement program would improve network performance or make the network perform more efficiently." The motivation is from the teachings of Bruins and Merriam. In the abstract and Claim 5 of Bruins, Bruins teaches improving performance of the router by modifying performance parameter of the router based on the aggregated message flow information. Moreover, in col. 3, lines 1-19 and col. 5, line 66 to col. 6, line 16, Merriam teaches measuring and using actual performance time information to fix unacceptable delays.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.
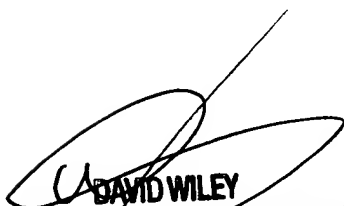
Respectfully submitted,

LE HIEN LUU
PRIMARY EXAMINER

Conferees:

ARIO ETIENNE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

DAVID WILEY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

Peter C. Mei
Bingham McCutchen LLP
3 Embarcadero Center
San Francisco, CA 94111
(650) 849-4960